(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

LETTERS PATENT APPEAL NO. 4 OF 2004.

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr. S.S. Kantak and Ms. R. Chodankar, Advocates for the Appellants.

Mr. M.B. D'Costa, Senior Advocate with Mr. J.A. Lobo, Advocate for the respondents.

CORAM : S.A. BOBDE &
N.A. BRITTO, JJ.

DATE : 15TH JUNE, 2004.

P.C.:

This Letters Patent Appeal is preferred against the Judgment and Order dated 5th March, 2004 delivered by the learned Single Judge of this Court in Writ Petition No.381/1999.

By the impugned order, the learned Single Judge has set aside the Judgment of the Administrative Tribunal and restored the order of the Rent Controller. As a result, the learned Single Judge has

permitted eviction of the appellants under Section 23(1)(a) of the Act. The Writ Petition purports to be a petition under Arts.226 and 227 of the Constitution of India and prays for a writ of certiorari against the order of the Administrative Tribunal. Having regard to the fact that ordinarily orders under the Rent Act are challenged under Art.227 of the Constitution of India and having regard to the Judgments of two Division Benches of this Court reported in **Madhukar Chandraban Mohite v. Balkrisna Govind Sulakhe** (1999 Vol. 101 (3) BLR 824) and another judgment of the Division Bench in **Kondiba Dondibai Dalvi v. Narayan Namdeo Narware** (2001 (2) Mah. L.J. 820), we are satisfied that the petition was primarily moved and argued under Art.227 of the Constitution of India. We are fortified in our view by the observations of the learned Single Judge in paragraph 10 of the impugned judgment where the learned

Judge has indicated that this court was exercising its powers under Art.227 of the Constitution of India.

Having regard to these circumstances, we are of the view that the present Letters Patent Appeal is not tenable and being one against an order under Art.227 of the Constitution of India, we accordingly dismiss the same.

Learned counsel for the petitioner submits that the issue as to tenability is pending before the Hon'ble Supreme Court of India in another matter carried by this court by way of Special Leave Petition in similar circumstlances.

Hence we consider it appropriate in the interest of justice to continue the interim

order dated 5th April, 2004 for a period of eight weeks from today.

S.A. BOBDE, J.

N.A. BRITTO, J.

sl.